Memorandum

Members of the Joint Task Force on Hospital Discharge Challenges posed several questions to presenters at the March 28, 2024 meeting. Staff prepared this memorandum to provide additional information gathered, where available.

Questions are organized by the responding agency and include:

- Background Check Unit (BCU),
- Oregon State Board of Nursing (OSBN),
- Oregon Longitudinal Data Collaborative (OLDC), and
- New Hampshire Office of Professional Licensure and Certification (OPLC).

Note: this document contains general information compiled from several sources to facilitate ongoing Task Force discussions. This document does not contain and is not intended to provide legal advice or formal interpretation of Oregon law, administrative rule, or legislative intent.

ODHS Background Check Unit[1]

The Background Check Unit (BCU) provided information about processes related to post-acute care workers both in advance and in response to the Task Force's March 28 meeting. The following responses have been edited for length and clarity. Note: to questions about processing times and reasons for adverse determinations, BCU responded that it does not have capacity to analyze this data. BCU does not collect data on race/ethnicity.

In 2023, the BCU received 207,301 background check applications for individuals offered employment (direct or contract) or placement (volunteer work, household member of a living facility) across settings. Including additional individuals subject to ODHS and OHA screenings, the BCU received a total of 224,241 applications.

Background Checks for Post-Acute Workers

The BCU determines the requirements for each background check by "request type." Request types vary for programs, facilities, and the needs of people that an applicant would work with. Request types are not based on licensure, meaning that BCU would perform the same background check for a registered nurse or an unlicensed caregiver

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[1] Information provided by BCU staff to LPRO via email correspondence on April 16, 2024.

at the same assisted living facility.[2] . Exhibit 1 below includes checks performed by the BCU for request types related to post-acute care roles.

Exhibit 1. Background Check Unit Post-Acute Care Requests, by Type in 2023

2023 Request by Type	Received [3]	Completed [4]	Ratio of Completed: Received
Direct Care (ORS 443.004) APD AFH Paid	9,591	9,490	98.95
APD HCW	20,548	20,463	99.59
APD ICP Provider	168	163	97.03
APD In-home care	15,788	15,627	98.98
APD Paid	51,311	50,861	99.12
MH Paid	9,608	9,648	100.4
MH PCA/PSW	776	773	99.61
Nursing & Skilled Nursing APD Paid NF/SNF	12,707	12,515	98.49
Traditional Health Workers			
THW certification	2,726	1,910	70.07

Source: LPRO

Data: ODHS/OHA Background Check Unit

Processing Times and Provisional Approval

Question: In the last year, what was the average processing time for subject individuals who do and do not have potentially disqualifying conditions?

Response: The BCU does not have the capacity to collect this data; in addition, due to the volume of background checks we receive, the different criteria involved (such as whether fingerprints are required), the turnaround time varies quite widely from month to month.

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[2] These workers may also be subject to separate background check processes of licensing boards.

[3] Includes applications received in 2023 and completed in 2024.

[4] Include applications received in 2022 and completed in 2023.

Question: Are there circumstances where an applicant may be conditionally approved to work while a background check is pending?

Response: Federal directives, state laws, and licensing administrative rules determine if a subject individual may work between authorization and disclosure for the background check and the final fitness determination, so conditional hiring policies vary by program. Examples of programs that may allow for applications to work provisionally include assisted living facilities, residential care facility, and nursing facilities. An example where a person cannot work until the final fitness determination is homecare workers.

Question: Among individuals who are provisionally approved to work while a background check is pending, what percent are later determined to have a disqualifying conviction or condition?

Response: The BCU does not have the capacity to collect this data.

Potential Disqualifying Convictions and Conditions ("PDQs")

Question: Of applications received, how many had potentially disqualifying conditions or convictions (PDQ)?[5]

Response: The BCU does not have the capacity to collect this data. A rough estimate is ~4.00% of background check applications received.

Question: Of applications with potentially disqualifying conditions or convictions, how many were approved?

Response: The BCU does not have the capacity to collect this data. For the entirety of BCU's work, monthly denials ranged from 1.00% to 1.58% of completed determinations.

Question: Which convictions or conditions are *most* often associated with denial of approval to work?

Response:

BCU does not have the capacity to collect this data. The BCU denies a subject individual if it determines that, more likely than not, the subject poses a risk to the physical, emotional, or financial well-being of vulnerable individuals. (OAR 407-007-0320(2)(c)).

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[5] See, "The Weighing Test for ODHS/OHA Human Resources Background Checks" for information about how PDQs are evaluated in the context of an application. (link).

Question: Of potentially disqualifying convictions and conditions, which conditions are *least* often associated with denial of approval to work?

Response: The BCU does not have the capacity to collect this data.

Question: How are arrests, pending charges, and indictments considered in cases where there is no conviction?

Response: The BCU may only consider arrests, pending charges, or indictments if they are for crimes listed in ORS 443.004(3).[6] If an arrest, pending charge, or indictment is not among those listed in ORS 443.004(3), it is *not* considered potentially disqualifying. It is not considered in the weighing test.[7]

To verify whether an applicant has a potentially disqualifying conviction or condition, the BCU may review any available online court records (e.g., the Oregon eCourt Case Information) or contact local district attorney offices.

Question: How are arrests and/or convictions related to marijuana weighed?

Response: Convictions and arrests, pending charges, or indictments for manufacturing or delivery of a controlled substance are "permanent review." Regardless of how long ago they occurred, they are potentially disqualifying and BCU must complete a weighing test to determine the final fitness determination.

Convictions and arrests, pending charges, or indictments for possession of a controlled substance are "ten-year review." If they occurred within ten years of the background check application, they are potentially disqualifying and BCU must complete a weighing test to determine the final fitness determination.

Pursuant to ORS 181A.195, the Department of Human Services or the Oregon Health Authority may not consider a conviction on a charge relating to marijuana if the charge is no longer a criminal offense" (ORS 181A.195(11)(a)(C)).

Question: How is lived experience (for example, with substance use disorder) factored into BCU review?

Response: If BCU finds that a subject individual has any potentially disqualifying convictions or conditions, BCU completes a weighing test, which may include the lived experience of criminal involvement, and circumstances since the crime.

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[6] See the "Potentially Disqualifying Conviction List" (link).

[7] It is unclear whether or how the BCU considers information related to records of arrest, dismissal of charges, or conviction that are "set aside" pursuant to ORS 137.225.

Applications and outcomes by race/ethnicity

Question: Can the BCU provide the number of background checks requested in 2023 disaggregated by race?

Response: The BCU does not have the capacity to collect this data. The BCU does not collect data or make reports about the background check process that include race or ethnicity data about subject individuals. The BCU does not collect race or ethnicity information from subject individuals and its systems do not track this information.

Question: Can the BCU provide information about processing times by race?

Response: BCU does not have the capacity to collect this data.

Appeals and Contested Case Hearings

Question: Of determinations by the BCU that an individual was unfit, how many were appealed, and what were the results?

Response: For all applications received in 2023, the BCU received 306 requests for appeals. [LPRO staff note: Requests for appeal are screened to determine whether they are timely and whether the issue is appealable. Most requests for appeal are accepted and reviewed. In a contested case hearing, an administrative law judge makes a new fitness determination based on the evidence in the hearing record (OAR 407-007-0080).]

In in 2023, 251 appeals were completed, with 90 appeals approved and 161 maintaining the denial due to subject individual withdrawal, failure to participate, or contested case hearing outcome. The BCU has internal documentation of the reasons but responded that "they are not 'data points' that can be compiled."

Question: What is the average processing time for an appeal?

Response: This data varies widely month to month, depending on the reasons for the denial or restricted approval (criminal or abuse), the number of potentially disqualifying convictions or conditions, the active participation of the subject individual, whether the case goes to contested case hearing, and how long the administrative law judge takes to provide an order.

Question: Among subject individuals who appeal, what percent of appeals are disputing the accuracy of records?

Response: The BCU does not have the capacity to collect this data. The BCU noted that if a person has evidence of criminal history, fingerprint capture and a national fingerprint-based criminal records check are required.

Oregon State Board of Nursing[8]

Following LPRO staff presentation on background check processes for post-acute workers, members asked a series of questions related to OSBN's processes. This section includes OSBN-provided information on:

1) criminal history checks for Certified Nursing Assistants,
2) questions about nursing student clinical placements, and
3) questions about nursing program capacity and faculty compensation.

OSBN responses are provided below and have been lighted edited for brevity.

CNA Criminal History Records Checks

Question: What is the average license processing time for Certified Nursing Assistants? How does it differ for applicants whose background check requires a follow-up investigation?

Answer:

In 2023, OSBN received 4,824 applications for CNA licensure. Of these:

- Less than 1% required an investigation either due to a self-reported conviction or a potentially disqualifying condition on a criminal history records check.
- 28 out of 31 investigated applications were ultimately approved.
- 3 out of 31 applications were denied. Two denials were due to failure to cooperate with the investigation, and one due to noncompletion of their program.

CNA application processing times in 2023 and 2024 YTD are presented in Exhibit 2. In 2023, processing times for CNA applicants who required further investigation were roughly three times longer than for those who do not require investigation. Monthly trends for all application processing are decreasing over time (see Exhibit 3).

Exhibit 2. OSBN Application Processing Time for CNAs, 2023 and 2024 YTD
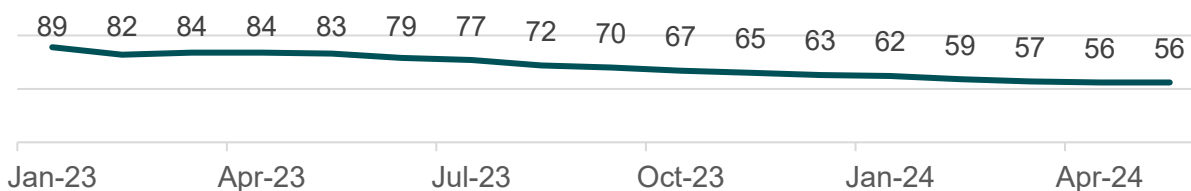
	2023	2024 YTD
Applications *not requiring* follow-up investigation	63 days	23 days
Applications *requiring* follow-up investigation	170 days	NA

Source: Oregon State Board of Nursing

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[8] Information provided by OSBN staff to LPRO via email correspondence on April 22, 2024.

Exhibit 3: Average CNA Licensure Application Processing Days, by Month

89 82 84 84 83 79 77 72 70 67 65 63 62 59 57 56 56

Jan-23   Apr-23   Jul-23   Oct-23   Jan-24   Apr-24

Source: LPRO

Data: Oregon State Board of Nursing

Nursing Student Clinical Placements

Question: Can nursing programs offer students clinical rotations in post-acute settings or are they required to do clinical rotations in hospitals?

Answer:

Schools must ensure that students receive "direct care" experiences, and these experiences can occur in either an **acute** or a **community-based** settings. Community-based settings are settings that "do not exist primarily for the purposes of providing nursing care or medical services" (e.g., adult foster homes or residential care). In some places, OSBN uses "direct care" to mean an acute care unit in the hospital. However, the hours that students care for people in community-based care settings are also counted as direct care hours.

The rules need to be updated to support everyone understanding direct care as community-based care. This is on a list of issues to be addressed by the Division 21 Rules Advisory Committee.

Question: The Oregon Longitudinal Data Collective recommended OSBN lead development of a statewide system for coordinating clinical placements for nursing students (link to study). OLDC noted that nursing programs currently compete for limited clinical placements at hospitals. What additional context should the Task Force consider related to this recommendation?

Response:

The StudentMax Consortium already coordinates clinical and education partners in Portland. Since the creation of the consortium, hospital partners have been less overwhelmed with individual schools requesting clinical placements, as all requests are typically directed through the consortium. If OSBN were tasked with managing thousands of annual student placements across the state, OSBN would need resources, as it would be an immense administrative burden. This could interfere with the relationships already established by schools of nursing and hospital partners. Out-

of-state programs will also need to be accounted for, as they place students in acute care settings in Oregon.

Many of OSBN's educational partners have expressed that acute care student placements are challenged by facilities that are not fully staffed. Resources are used to train new hires, which interferes with accepting students. Nurses on the unit may not have the seniority/experience needed to work with students.

OSBN rules require students to have direct care cohort placements and 1:1 final practicum. Schools sometimes compete with themselves over the type of placement needed. Requiring every RN graduate to have a 1:1 experience may be an excessive burden in a workforce crisis.

Question: What factors limit the expansion of different types of nursing student clinical placements (beyond hospital settings), and where may opportunities exist?

Response:

Current OSBN rules may be prohibitive due to the need for faculty oversight.
- Currently, **direct care settings** require faculty members to be present in the building to provide meaningful oversight to students at an 8:1 ratio. This can preclude the use of settings such as ambulatory care centers, clinics, and post-acute centers if they are not able to accommodate eight students.It is cost and faculty-prohibitive for schools to have lower ratios.
- If the school utilizes a **community-based setting**, students may be placed at a site where the faculty is not physically present but still able to be meaningfully present. Community-based settings are currently defined as places where nursing or medical care is not the primary purpose, such as foster homes, assisted living, or residential care.

OSBN could look to updating rules regarding oversight for settings between hospital floors and the community. Changing the ratio to allow more students (1:10, 1:12) is not advisable due to safety concerns and is out of line with evidence-based standards from National Council of State Boards of Nursing (NCSBN).

Question: Could a faculty preceptor oversee students placed across multiple sites with a single organization? For example, if an organization operates multiple clinics or residential care settings, could a single preceptor oversee students working with RNs across those sites?

Answer:

Faculty must be *physically* present to oversee students in direct care settings (see OAR 851 Division 21). However, faculty do *not* need to be physically present if the school

uses a community-based setting, and faculty can be meaningfully involved without being physically present.

Clinics do not meet [the definition of community-based setting] and would therefore require the faculty member to be on site. Residential care facilities are considered community based, and a faculty member would not need to be present. Ultimately if, for example, a school wanted to place students across multiple Providence sites, because they are not "community based" then faculty would need to be present at each location.

If facilities don't have the staff, they cannot accept as many students. Placing one faculty over fewer than 8 students is expensive for schools, especially in a faculty shortage. This is where we need to get creative. If OSBN updates rules to allow faculty to not be physically present on site, there will need to be more oversight from facilities/nurses to ensure safety. If the Oregon Nurse Practice Act is updated to reflect this, we will need systems to be creative.

Question: Nurses at the Oregon State Hospital do not currently serve as preceptors for clinical placements. Clarity is needed about how state ethics rules apply to this situation.

Response:

- OSBN does not have any direct information about this. [Director Prusak has] heard that the concern is related to not accepting a second job while a state employee. Pay could be a concern here, as some clinical partners provide financial incentives for preceptors.
- OSBN rules define the clinical preceptor as an employee of the healthcare facility, clinic, or private practice; they do not work for the education program.

Nursing Program Capacity and Faculty Compensation

Question: The OLDC recommends the Higher Education Coordinating Commission establish a work group to address nurse faculty salary disparities at the statewide level. One consideration was that individual colleges that increase salaries may pull existing faculty from other schools rather than recruiting new faculty. What additional context from OSBN would be helpful to share with the Task Force?

Response:

This is a valid concern. Washington State addressed this issue by passing a law to increase nursing faculty pay across the state.

- [LPRO staff note: See Washington State House Bill 2158 (2019), section 5(5). This measure, in part, appropriated funds to the state board for community and technical colleges including: 1) $20,400,000 "solely to increase nurse educator salaries", 2) $20,000,000 to increase other high-demand program faculty salaries including nursing an other health related professions, stipulating that "contract negotiations relating to salary increases must consider, and to the extent

practicable establish, salaries that are comparable to industry professions, and no less than the average salary identified by the college and university professional association for human resources or a similar organization."]

The nurse faculty shortage is a nationwide concern. National nursing organizations are advocating for more funding for programs to train nursing faculty, increasing pay, and developing educational-clinical partnerships. OHSU's School of Nursing buys hours from the clinical site, and faculty get paid clinical pay for faculty time. More partnerships between educational institutions and healthcare systems, hospitals, and community-based care [are the answer].

Question: What factors limit the expansion of nursing education programs at Oregon's public universities?

Answer: In Oregon, faculty and clinical capacity are the primary issues that must be addressed. Based on annual survey data from education programs, over one third of our nursing programs operate with less than 35% full-time faculty. This threshold is an evidence-based quality indicator from the NCSBN.

Oregon Longitudinal Data Collaborative

Members asked a series of questions following OLDC's presentation on March 28, 2024. OLDC provided the responses below that are lightly edited for brevity.

Context for OLDC Research and Recommendations

The Oregon Longitudinal Data Collaborative is "a shared services research and reporting program. Our focus is on the ways that the education and workforce systems interact and impact each other. We partner with the Department of Education, Higher Education Coordinating Commissions, Teacher Standards and Practices Commission, and the Employment Department. We bring in select individual level data from these agencies and match identities across datasets for research and reporting projects that these agencies have requested from us. These projects use this connected data to provide overviews on specific topics or answers to specific research questions."

"While our research can help identify root causes, our recommendations are not intended to be specific policy proposals. Instead, our recommendations are intended to identify key factors of the underlying issues and identify key partners who should help develop policy solutions. As an example, in the Healthcare Education Shortage Study we recommend addressing the faculty pay gap, but we do not provide a specific recommendation on the best way to address that. This is where the policy expertise of

other state agencies comes in and our recommendations focus on the right players who need to be at the table for these conversations."[9]

Nurses who Leave the Profession

Question: What do we know about where people go when they leave nursing roles?

Response: OLDC can report on the percentage of people who are no longer working in healthcare in Oregon, however we cannot say what the underlying reason for them leaving the profession is. We can show how many work in a different field in Oregon, but for the individuals we no longer see in Oregon, we cannot say whether it represents a retirement, leaving the state, etc.

Question: Among nurses who leave for retirement, do they engage in other efforts such as teaching?

Response: OLDC could see who worked in health care and then in education but could not say whether these individuals retired or this is a career change.

Question: Of those who switch to a different industry within the state – are they switching to a different healthcare role or leaving entirely?

Response: OLDC could show how many move from health care to a different industry and would be able to compare wage outcomes for each. We do not have access to current licensure data and would recommend consulting staff from the Oregon State Board of Nursing to better answer this question.

Faculty Compensation

Question: What do we know about nurse faculty compensation packages being offered by community colleges during bargaining?

Response: OLDC does not have access to the specific compensation packages being offered by institutions. We would recommend bringing staff in from the Higher Education Coordinating Commission to help answer this question.

Question: How does faculty compensation affect supply/demand when fields are predominantly a single gender?

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[9] Information provided by OLDC staff to LPRO via email correspondence on April 4, 2024.

Response: OLDC did not do a comparative analysis of faculty compensation in other academic fields. Faculty salary data is available from the BLS, and faculty pay by academic field is available.

Gender and Student Recruitment

Question: Could attracting more male applicants increase Oregon's supply of nurses?

Response: OLDC did not identify any significant findings around gender or racial inequity in how our institutions admit students or in graduation rates. Nursing is a predominantly female field, but male and female applicants were admitted at equal rates into nursing programs. Our study determined Oregon has a surplus, not a shortage, of applicants into our nursing programs.

New Hampshire Office of Professional Licensure and Certification

Question: Members asked for additional information about New Hampshire's approach to grant provisional licensure to work for nursing applicants while background checks are pending.

Response:

In December 2021, New Hampshire faced a backlog of 700+ pending nurse licensure applications that stemmed in part from background checks newly required for nurses who had received provisional licenses during the COVID-19 pandemic.[10]

New Hampshire Governor Sununu issued Executive Order 2021-12 to immediately identify ways to expedite processing of nurse licensure applications and background checks. The New Hampshire Board of Nursing subsequently passed an emergency rule to allow applicants to begin working once a fingerprinting appointment was scheduled.[11]

OPLC was unable to quantify how this change impacted average processing timelines or the percent of applicants who were later denied licensure due to background check findings.[12] Media reports from the time indicate that of the 766 licensure applications

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[10] Kaplan, A. "'A real crisis': License backlogs in some states are preventing health care workers from seeing patients." NBC News, February 12, 2022. Available at: https://www.nbcnews.com/health/health-care/-real-crisis-license-backlogs-states-prevent-health-care-workers-seein-rcna14740

[11] Bookman, T. "Nursing board streamlines licensing." Concord Monitor (NH), December 9, 2021: 4. NewsBank: America's News – Historical and Current. https://infoweb-newsbank-com.slo.idm.oclc.org/apps/news/document-view?p=AMNEWS&docref=news/187657437034D5E8.

[12] Communication with Brenda Golden Hallisey, Office of Professional Licensure and Certification, State of New Hampshire. April 16, 2024.

that were pending, 115 (15%) were expected to be immediately approved because of the emergency rule change.[13]

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[13] Bookman, T. "Nursing board streamlines licensing." Concord Monitor (NH), December 9, 2021: 4. NewsBank: America's News – Historical and Current. https://infoweb-newsbank-com.slo.idm.oclc.org/apps/news/document-view?p=AMNEWS&docref=news/187657437034D5E8.